

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-20551-13

D-13 AHAB ELMADHOUN,

Defendant.

**OPINION AND ORDER DENYING
APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL AND REQUEST
FOR COURT-APPOINTED ATTORNEY**

Before the court is Defendant Ahab Elmadhoun's application for leave to appeal *in forma pauperis* (Dkt. # 1260) and his request for a court appointed attorney (Dkt. # 1261). Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who desires to appeal *in forma pauperis* must file a motion in the district court. This motion must include an affidavit that demonstrates "the party's inability to pay or to give security for fees and costs[.]" Fed. R. App. P. 24(a)(1)(A). "The decision to grant or deny an application to proceed [*in forma pauperis*] lies within the sound discretion of the district court." *Benson v. Carlton*, No. 00-5040, 2000 WL 1648054, at *1 (6th Cir. Oct. 26, 2000).

Similarly, the Criminal Justice Act of 1964 provides that "[r]epresentation shall be provided for any financially eligible person who . . . is charged with a felony[.]" 28 U.S.C. 3006(A)(a)(1). The statute, however, only requires the court to appoint counsel "if satisfied after appropriate inquiry that the person is financially unable to obtain

counsel.” Both issues have been fully briefed, and the court concludes that a hearing is unnecessary. See E.D. Mich. LR 7.1(f)(2).

Defendant has filed the standard financial affidavit form as supplied by the United States Court of Appeals for the Sixth Circuit. In his application, Plaintiff asserts that he is “unemployed” and that the only other income he has received “[i]n the past 12 months” has come from rental payments from two properties — one that is currently in foreclosure, and the other which is subject to a “restraining order on Assets” due to divorce proceedings. (Dkt. # 1260, Pg. ID 9898-99.) In total, Defendant claims he has “less than \$100” total in cash, checking, and savings. (*Id.* at Pg. ID 9899.)

Nevertheless, the court finds these claims unpersuasive, especially in light of the contradictory evidence in the record. For example, as the government notes in its opposition brief, the Presentence Report indicated that Defendant had \$111,336 in assets, mostly “in the form of real property located in Michigan.” (Dkt. # 1267, Pg. ID 9943.) Even giving Defendant the benefit of the doubt and discounting the equity in the foreclosed (\$38,500) and marital homes (\$41,500), Defendant should still have \$31,336 in assets. (See *Id.*; Dkt. # 1260, Pg. ID 9899.) Defendant, himself, admits he has \$28,000 in equity in an investment property located in London, Ontario, and fails to explain why this equity could not be liquidated to pay for appellate costs. (Dkt. # 1260, Pg. ID 9899.)

More importantly, Plaintiff was convicted of illegal drug distribution and money laundering, (Dkt. # 797), activities through which he amassed a fortune of \$2.4 million over the course of three years, most of which he transferred to accounts and real property overseas, (Dkt. 1267, Pg. ID 9944). The government has been able to trace about \$598,048 to the United Arab Emirates, but \$1.8 million remain unaccounted for.

(*Id.*) Due to the likelihood that Defendant still has access to these illicitly derived funds, the court is not inclined to grant Defendant's petition.

IT IS THEREFORE ORDERED that Plaintiff's "Application to Proceed Without Prepayment of Fees" (Dkt. # 1260) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's "Request for A Court-Appointed Attorney" (Dkt. # 1261) is DENIED.

s/Robert H. Cleland

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 9, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 9, 2015, by electronic and/or ordinary mail.

s/Lisa Wagner

Case Manager and Deputy Clerk
(313) 234-5522

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